

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0658-WQ-E TCEQ ID: RN105223481 CASE NO.: 35753
RESPONDENT NAME: J.R.'S CONCRETE INCORPORATED

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 212 Interstate Loop, Williamson County</p> <p>TYPE OF OPERATION: Concrete batch plant and clean out pits</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent was dumping waste from its cleanout pits into the adjacent creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired May 3, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Water Enforcement Section, MC 169, (512) 239-5223</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929</p> <p style="margin-left: 20px;">Respondent: Mr. Jim Hutto, Registered Agent, P.O. Box 432, Hutto, Texas 78636-0432</p> <p style="margin-left: 20px;">Mrs. Alcadio Chapa, Jr., Director, 315 Axis Deer Trail, Hutto, Texas 78636</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: January 24, 2008</p> <p>Date of Investigation Relating to this Case: February 20, 2008</p> <p>Date of NOE Relating to this Case: April 4, 2008</p> <p>Background Facts: The EDP RP was filed on December 22, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDP RP. The Respondent failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>WQ:</p> <ol style="list-style-type: none"> Failed to obtain coverage to discharge wash-water from a concrete batch plant under TPEDS Permit No. TXG110000 [30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CFR §122.26(c)]. Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)]. 	<p>Total Assessed: \$5,400</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$5,400</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Remove and properly dispose of the accumulated sediments in the tributary of Brushy Creek located adjacent to the Site; and Develop and implement a Storm Water Pollution Plan and Submit a Notice of Intent to Comply with the General Permit requirements. Within 45 days submit copies of documentation necessary to demonstrate compliance with Ordering Provisions Nos. 1.a. and 1.b.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

DATES	Assigned	7-Apr-2008	Screening	16-Apr-2008	EPA Due	
	PCW	16-Apr-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	J.R.'s Concrete Incorporated
Reg. Ent. Ref. No.	RN105223481
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35753	No. of Violations	2
Docket No.	2008-0658-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lauren Smitherman
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$4,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **10% Enhancement** **Subtotals 2, 3, & 7** **\$400**

Notes: The penalty is enhanced due to one NOV with a same or similar violation and one NOV without a same or similar violation.

Culpability **Yes** **25% Enhancement** **Subtotal 4** **\$1,000**

Notes: The Respondent was informed he would need a stormwater permit when concrete manufacturing began by a letter dated October 5, 2007.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$147**
 Approx. Cost of Compliance **\$2,600**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,400**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$5,400**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$5,400**

DEFERRAL **0% Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral due to culpability.

PAYABLE PENALTY **\$5,400**

Screening Date 16-Apr-2008

Docket No. 2008-0658-WQ-E

PCW

Respondent J.R.'s Concrete Incorporated

Policy Revision 2 (September 2002)

Case ID No. 35753

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN105223481

Media [Statute] Water Quality

Enf. Coordinator Lauren Smitherman

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

The Respondent was informed he would need a stormwater permit when concrete manufacturing began by a letter dated October 5

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one NOV with a same or similar violation and one NOV without a same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 16-Apr-2008		Docket No. 2008-0658-WQ-E		PCW	
Respondent J.R.'s Concrete Incorporated		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35753		<i>PCW Revision March 8, 2008</i>			
Reg. Ent. Reference No. RN105223481					
Media [Statute] Water Quality					
Enf. Coordinator Lauren Smitherman					
Violation Number	<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>				
Rule Cite(s)	<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)</div>				
Violation Description	<div style="border: 1px solid black; padding: 2px;">Failed to obtain coverage to discharge wastewater from a concrete batch plant under the Texas Pollutant Discharge Elimination System ("TPDES") TXG110000 permit.</div>				
Base Penalty				<div style="border: 1px solid black; padding: 2px; text-align: right;">\$10,000</div>	

>> Environmental, Property and Human Health Matrix

		Harm			
	Release	Major	Moderate	Minor	
OR	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px; text-align: right;">0%</div>
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

>> Programmatic Matrix

		Falsification		Major	Moderate	Minor	
		<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		<div style="border: 1px solid black; width: 50px; height: 15px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px; text-align: right;">10%</div>

Matrix Notes

100% of the permit requirement was not met.

Adjustment

\$9,000

\$1,000

Violation Events

Number of Violation Events	<div style="border: 1px solid black; padding: 2px;">3</div>	<div style="border: 1px solid black; padding: 2px;">56</div>	Number of violation days
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<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	monthly	<div style="border: 1px solid black; width: 50px; height: 15px; text-align: center;">x</div>	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
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Violation Base Penalty

\$3,000

Three monthly events are recommended based on the date of the investigation (February 20, 2008) to the date of screening (April 16, 2008).

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<div style="border: 1px solid black; padding: 2px;">\$125</div>	Violation Final Penalty Total	<div style="border: 1px solid black; padding: 2px;">\$4,050</div>
This violation Final Assessed Penalty (adjusted for limits)			<div style="border: 1px solid black; padding: 2px;">\$4,050</div>

Economic Benefit Worksheet

Respondent J.R.'s Concrete Incorporated

Case ID No. 35753

Reg. Ent. Reference No. RN105223481

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,000	20-Feb-2008	31-Dec-2008	0.9	\$6	\$115	\$121
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$100	20-Feb-2008	31-Dec-2008	0.9	\$4	n/a	\$4
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a stormwater permit and to develop and implement a stormwater pollution prevention plan (SWP3). Date required is the date when a permit first should have been obtained. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,100

TOTAL

\$125

Screening Date 16-Apr-2008		Docket No. 2008-0658-WQ-E		PCW	
Respondent J.R.'s Concrete Incorporated		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35753		<i>PCW Revision March 8, 2008</i>			
Reg. Ent. Reference No. RN105223481					
Media [Statute] Water Quality					
Enf. Coordinator Lauren Smitherman					
Violation Number		<div style="border: 1px solid black; width: 50px; text-align: center;">2</div>			
Rule Cite(s)		<div style="border: 1px solid black; padding: 5px; text-align: center;">Tex. Water Code § 26.121(a)</div>			
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to prevent the unauthorized discharge of sediment into or adjacent to waters in the state. Specifically, during the February 20, 2008 investigation, the investigator observed discharge of concrete wash water and industrial material to a tributary of Brushy Creek. No control measures were in place at the site and an accumulation of sediments was observed in the ditch.</div>			
Base Penalty				<div style="border: 1px solid black; width: 100px; text-align: right;">\$10,000</div>	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	x	
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
				Percent	<div style="border: 1px solid black; width: 50px; text-align: right;">10%</div>
>> Programmatic Matrix					
Matrix Notes	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Human health or the environment has been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.				
				Percent	<div style="border: 1px solid black; width: 50px; text-align: right;">0%</div>
Adjustment				<div style="border: 1px solid black; width: 100px; text-align: right;">\$9,000</div>	
				<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,000</div>	
Violation Events					
Number of Violation Events		<div style="border: 1px solid black; width: 50px; text-align: center;">1</div>		Number of violation days	<div style="border: 1px solid black; width: 50px; text-align: center;">56</div>
mark only one with an x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	quarterly	x			
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
				Violation Base Penalty	<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,000</div>
One quarterly event is recommended based on the date of the investigation (February 20, 2008) to the date of screening (April 16, 2008).					
Economic Benefit (EB) for this violation					
Estimated EB Amount		<div style="border: 1px solid black; width: 100px; text-align: right;">\$22</div>		Statutory Limit Test	
				Violation Final Penalty Total	<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,350</div>
This violation Final Assessed Penalty (adjusted for limits)				<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,350</div>	

Economic Benefit Worksheet

Respondent J.R.'s Concrete Incorporated

Case ID No. 35753

Reg. Ent. Reference No. RN105223481

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$500	20-Feb-2008	31-Dec-2008	0.9	\$22	n/a	\$22
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the sediments in the ditch. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$22

Compliance History

Customer/Respondent/Owner-Operator: CN603187410 J.R.'s Concrete Incorporated Classification: AVERAGE Rating: 3.00
Regulated Entity: RN105223481 READY MIX BATCH PLANT Classification: AVERAGE Site Rating: 3.00
AIR NEW SOURCE PERMITS REGISTRATION 82478
Location: 212 INVESTMENT LOOP, WILLIAMSON CO, TX, 78634 Rating Date: September 01 07
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 16, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 16, 2003 to April 16, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lauren Smitherman Phone: 512-239-5223

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 09/28/2007 (595844)
2 11/09/2007 (600521)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 05/29/2007 (556073)
Self Report? NO Classification: Moderate
Citation: TWC Chapter 26 26.121
Description: Unauthorized Discharge of concrete wash water to Brushy Creek.
Date: 10/05/2007 (596654)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(1)
Description: Failure to get a permit to construct prior to start of construction.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
J.R.'S CONCRETE
INCORPORATED
RN105223481**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0658-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7 and 26, the rules of the TCEQ, and 40 CODE OF FEDERAL REGULATIONS ("CFR") pt. 122, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is J.R.'s Concrete Incorporated ("J.R.'s Concrete").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. J.R.'s Concrete owns and operates a concrete batch plant and clean out pits located at 212 Interstate Loop, Williamson County, Texas (the "Site").
2. The Site has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an inspection on February 20, 2008, a TCEQ Austin Regional Office investigator documented that J.R.'s Concrete:
 - a. Failed to obtain coverage to discharge wash-water from a concrete batch plant under Texas Pollutant Discharge Elimination System ("TPEDS"), General Permit No. TXG110000.
 - b. Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the states. Specifically, on the date of the inspection the discharge of concrete wash-

water and industrial material was documented as flowing without control measures, into a tributary of Brushy Creek.

4. J.R.'s Concrete received notice of the violation on or about April 9, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of J.R.'s Concrete Incorporated" (the "EDPRP") in the TCEQ Chief Clerk's office on December 22, 2008.
6. By letter dated December 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served J.R.'s Concrete with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that J.R.'s Concrete received notice of the EDPRP.
7. More than 20 days have elapsed since J.R.'s Concrete received notice of the EDPRP, provided by the Executive Director. J.R.'s Concrete failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, J.R.'s Concrete is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, 40 CFR pt. 122 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., J.R.'s Concrete failed to obtain coverage to discharge wash-water from a concrete batch plant under TPDES Permit No. TXG 110000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c).
3. As evidenced by Finding of Fact No. 3.b., J.R.'s Concrete failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state. Specifically, discharge of concrete wash-water and industrial material was documented as flowing without control measures into a tributary of Brushy Creek, in violation of TEX. WATER CODE § 26.121(a).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served J.R.'s Concrete with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

5. As evidenced by Finding of Fact No. 7, J.R.'s Concrete failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against J.R.'s Concrete and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against J.R.'s Concrete for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of five thousand four hundred dollars (\$5,400.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. J.R.'s Concrete is assessed an administrative penalty in the amount of five thousand four hundred dollars (\$5,400.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and J.R.'s Concrete's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: J.R.'s Concrete Incorporated; Docket No. 2008-0658-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. J.R.'s Concrete shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, J.R.'s Concrete shall remove and properly dispose of the accumulated sediments in the tributary of Brushy Creek located adjacent to the Site.
- b. Within 30 days after the effective date of this Order, J.R.'s Concrete shall develop and implement a Storm Water Pollution Plan and Submit a Notice of Intent to Comply with the General Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c) to:

Wastewater Permitting Section
Water Quality Division, MC-148
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of this Order, J.R.'s Concrete shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions Nos. 2.a. and 2.b. The documentation shall include supporting documents including photographs, receipts and/or other records to demonstrate compliance with the ordering provisions. It shall include a certification notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The documentation and certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Water Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
2800 S. IH 35, Suite 100
Austin, Texas 78704-5712

- 3 All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon J.R.'s Concrete. J.R.'s Concrete is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If J.R.'s Concrete fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, J.R.'s Concrete's failure to comply is not a violation of this Order. J.R.'s Concrete shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. J.R.'s Concrete shall notify the Executive Director within seven days after J.R.'s Concrete becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by J.R.'s Concrete shall be made in writing to the Executive Director. Extensions are not effective until J.R.'s Concrete receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to J.R.'s Concrete if the Executive Director determines that J.R.'s Concrete has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

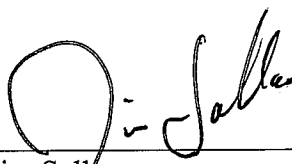
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of J.R.'s Concrete Incorporated" (the "EDPRP") was filed with the Office of the Chief Clerk on December 22, 2008.

I sent the EDPRP to J.R.'s Concrete at its last known address on December 22, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

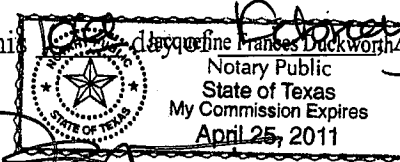
More than 20 days have elapsed since J.R.'s Concrete received notice of the EDPRP. J.R.'s Concrete failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".



Jim Sallans
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10th day of February, 2009.



Notary Stamp

Notary Signature